

### **Remarks**

Claims 1-12 and 18, 19, and 21-23, are currently pending in the application. With this Response, claims 1, 12, and 21, are amended, and new claims 24-27 are added. Upon entry of the current amendments, claims 1-12 and 18, 19, and 21-27 remain pending for consideration.

Applicants respectfully request reconsideration and further examination of the application in view of the amendments above and remarks below.

### **Fees for New Claims 24-27**

Because of claims previously paid for and subsequent canceled, Applicants submit that the fees due for adding dependent claims 24-27 is for one claim over twenty (\$50.00). Accordingly, enclosed herewith is a check in the amount of \$50.00 for one claim over twenty.

It is believed that there are no other fees due for adding new claims 24-27. If there are any other fees due for adding new claims 24-27, please charge such fees to the Kagan Binder Deposit Account No. 50-1775 and notify us of the same.

### **Support for Claim Amendments**

Applicants submit that the claim amendments are fully supported by the application as originally filed and do not present new matter.

Claims 1, 12, and 21 are amended to clarify that the yeast and chemical leavening agent are each present in an amount such that the dough composition can “proof” at a temperature in the range from 32°F to 46°F. Support for this amendment can be found throughout the specification, e.g., at page 8, lines 28 and 29.

New claims 24 and 26 feature specific ranges of amounts of acidic active agent and claims 25 and 27 feature amounts of basic active agent. Support for claim 24 can be found in the specification at, e.g., page 8, line 29 to page 9, line 1, and page 12, lines 1-6. Support for claims 25 and 27 can be found in the specification at, e.g., page 11, lines 20-23, and page 12, lines 27-31. Support for claim 26 can be found in the specification at, e.g., page 8, line 29 to page 9, line 1, and page 12, lines 18-22.

**Rejection Under 35 U.S.C. §102**

Claims 1, 2, 5, 7, 8, and 10-12 stand rejected under 35 U.S.C. §102(b) as being anticipated by Freyn et al. (U.S. Pat. No. 5,451,417).

Applicants respectfully traverse this rejection because Freyn et al. does not inherently teach a dough composition that includes the combination of yeast and chemical leavening agent in amounts such that the dough composition can “proof” at a temperature in the range from 32°F to 46°F. The arguments and Affidavit of David J. Domingues (Affidavit) that were filed with the Request for Continued Examination on March 7, 2008, are incorporated herein by reference.

Independent claims 1 and 12 each feature an unproofed, frozen dough that includes the combination of yeast and chemical leavening agent, where the yeast and chemical leavening agent are in amounts such that the dough composition can “proof” at a temperature in the range from 32°F to 46°F. “Proof” means that the dough

- increases in volume by 50% or more; and
- has a raw specific volume in the range of from about 1.5 to about 3 cubic centimeters per gram (see the specification at, e.g., page 6, lines 16-24).

An unproofed, frozen dough that can, after thawing, proof at a temperature in the range from 32°F to 46°F is significant because such a temperature range is relatively much cooler than conventional proofing temperatures (see the specification at, e.g., page 2, lines 22-31). One advantage of such a dough is that the need to transfer the dough from the cooler temperature to a proof box (or ambient conditions), after thawing the dough, to allow for proofing of the thawed dough can be eliminated (see the specification at, e.g., page 5, lines 11-13). Accordingly, the thawed dough can remain at the cooler temperature and still be proofed. This is particularly desirable when a dough is thawed overnight for use when personnel arrive in the early morning as the proofed dough can simply be removed from cooler temperature (e.g., in a retarder) and ready to bake (see the specification at, e.g., page 5, lines 13-18). Another advantage of such a dough is that the time period required for a normally-yeast-leavened dough to sit for proofing between removal from a retarder and baking or frying, either by sitting in a proof box or by resting at ambient room temperature conditions can be eliminated (see the specification at, e.g., page 5, lines 19-22). Again, in the context of a dough that is thawed overnight in a retarder, morning personnel do not need to wait for a thawed dough to proof (after removal from a

retarder), but can bake the dough composition at any time, directly from the retarder (see the specification at, e.g., page 5, lines 22-25).

The Freyn et al. reference does not teach the combination of yeast and chemical leavening agent in amounts such that the dough can proof at a temperature in the range from 32°F to 46°F.

The outstanding Office Action asserts that because Freyn et al. disclose certain amounts of yeast and chemical leavening agent from columns two to five for their freezer-to-oven doughs, Freyn et al. inherently teach a dough that includes yeast and chemical leavening agent in amounts such that the dough can proof at a temperature in the range from 32°F to 46°F (see page 2, second and third paragraphs of the outstanding Office Action). Moreover, the outstanding Office Action asserts that the Freyn et al. dough that was replicated in the Affidavit does “proof” according to Applicants’ definition merely because the Freyn et al. dough increases in volume from 0 to 24 hours (see the Office Action at the bottom of page 3 to the top of page 4).

Applicants respectfully disagree because the Affidavit factually supports Applicants’ position that the Freyn et al. reference does not teach an unproofed, frozen dough that can, after thawing, be proofed at a temperature in the range from 32°F to 46°F. As shown in the Affidavit, the Freyn et al. dough did not “proof” as defined in Applicants’ specification (and as mentioned above) at 40°F or 45°F. Numbered paragraph 8 of the Affidavit shows that the Freyn et al. dough increased in volume by less than 50% and had a raw specific volume less than 1.5 cc/g.

The outstanding Office Action suggests that because the Affidavit compared one example of the Freyn et al. reference, the Affidavit is insufficient (see page 3, second paragraph of the Office Action). Applicants’ undersigned representative attempted to contact Examiner Tran to discuss this matter but was unsuccessful. Applicants invite the Examiner to contact Applicants’ undersigned representative at her earliest convenience to discuss this matter so as to advance prosecution.

The outstanding Office Action also asserts that the phrase “the dough composition, after thawing, can proof at retarder conditions” is not a positive limitation and does not determine the patentability of the claim (see page 2, paragraph 3 of the Office Action). Moreover, the outstanding Office Action suggests that the formulation on page two of the Affidavit is not commensurate in scope with the claims. Applicants respectfully disagree because the claim

language referred to by the Examiner functionally defines the amounts of yeast and chemically leavening agent that cause a dough composition to proof at a temperature in the range from 32°F to 46°F. Such functional claim language is acceptable (see, e.g., MPEP 2173.05(g)).

Claims 1, 2, 5, 7, 8, and 10-12 are also nonobvious over Freyn et al. There is no apparent reason or benefit why one of skill in the art would have modified the Freyn et al. reference to provide a dough having a combination of yeast and chemical leavening agent in amounts such that the dough can proof at a temperature in the range from 32°F to 46°F because the Freyn et al. reference is directed to freezer-to-oven doughs. Freezer-to-oven doughs are formulated to leaven at oven temperatures directly from frozen conditions, without “thawing and/or proofing” (see Freyn et al. at, e.g., col. 2, lines 16-29, and Examples 1-7).

Accordingly, it is respectfully requested that the rejection of claims 1, 2, 5, 7, 8, and 10-12 under 35 U.S.C. §102(b) as being anticipated by Freyn et al. be withdrawn.

Claims 3, 4, 6, 9, 18, 19, and 21-23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Freyn et al.

Applicants respectfully traverse this rejection because a dough composition that includes yeast and chemical leavening agent in amounts such that the dough composition can “proof” at a temperature in the range from 32°F to 46°F would not have been obvious over Freyn et al.

Claims 3, 4, 6, and 9, depend from claim 1 and claims 18 and 19 depend from claim 12. As discussed in the 102 rejection above, claims 1 and 12 are considered patentable over Freyn et al. Likewise, claims 3, 4, 6, 9, 18, and 19 are considered patentable over Freyn et al.

Similar to independent claims 1 and 12, independent claim 21 features an unproofed, frozen dough that includes the combination of yeast and chemical leavening agent, where the yeast and chemical leavening agent are in amounts such that the dough composition can “proof” at a temperature in the range from 32°F to 46°F. Claim 21 also features that the yeast is present in an amount of from 1 to 4 parts by weight yeast on a fresh crumbled yeast basis per 100 parts by weight of flour.

As discussed above with respect to claims 1 and 12, there is no apparent reason or benefit why one of skill in the art would have modified the Freyn et al. reference to provide a dough having a combination of yeast and chemical leavening agent in amounts such that the dough can

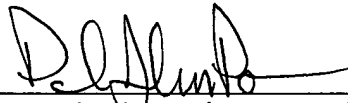
proof at a temperature in the range from 32°F to 46°F because the Freyn et al. reference is directed to freezer-to-oven doughs.

Accordingly, it is respectfully requested that the rejection of claims 3, 4, 6, 9, 18, 19, and 21-23 under 35 U.S.C. §103(a) as being unpatentable over Freyn et al. be withdrawn.

**Conclusion**

In view of the foregoing, it is respectfully submitted that the Application is in condition for allowance, and respectfully requested that the Application be passed to issue. The Examiner is invited to telephone the Applicants' undersigned representative in the event that such communication is deemed to expedite prosecution of this application.

Respectfully Submitted,

By:   
Paul John Parins, Reg. No. 54,358  
Customer Number 33072  
Phone: 651-275-9831  
Facsimile: 651-351-2954

Dated: August 18, 2008